

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.729 OF 2004

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Mrs.Stella Rangel ...Petitioner

v/s.

Perfect Machine Tools & Co.

Ltd. & Ors. ...Respondents

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Mr.Arshad Shaikh i/b M/s.Sanjay Udeshi & Co. for the
Petitioner.

Mr.J.P.Cama for the Respondents.

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WRIT PETITION NO.2185 OF 2004

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Perfect Machine Tools Co.Ltd.

and ors. ...Petitioners

v/s.

Mrs.Steela Rangel ...Respondent

...

Mr.J.P.Cama for the Petitioners.

Mr.Arshad Shaikh i/b M/s.Sanjay Udeshi & Co. for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 26TH JULY, 2006

P.C.:

1. Both these petitions are directed against the same order, therefore, they can be conveniently disposed of by a common order.

2. The facts that are material and relevant for deciding these petitions are that the Petitioner in Writ Petition No.2185 of 2004 is an employer and the Petitioner in Writ Petition No.729 of 2004 is an employee. The employer is a company registered under the Companies Act. The employee was in the employment of the employer as a stenographer. She was placed under suspension on 27-12-1993 pending departmental enquiry. Departmental enquiry was held. Charges that were levelled were held to have been proved and punishment of dismissal was imposed.

Against that order the employee filed a complaint being Complaint (ULP) No.420 of 1994. In that complaint initially an enquiry was made to find out whether the enquiry was fair and proper. The Labour Court on 21-2-1998 made an order on the issue whether the departmental enquiry was fair and proper and held that the enquiry was not fair and proper.

3. That order was not challenged at that time admittedly by the employer. The employer, thereafter, led oral evidence. The employer examined one Mr.Salvi and employee examined herself. On the basis of the documents and oral evidence before the Labour Court, the Labour Court held by order dated 31-12-2002 that the charges levelled against the employee are not proved. He also found that the employee is entitled to an order of reinstatement in service and that the employee is also entitled to full backwages.

4. This order was subjected to challenge by the employer in Revision, which was Revision Application (ULP) No.95 of 2003. It may be pointed out here that in this Revision Application the order dated 23-2-1998 whereby the Labour Court had held that the

enquiry was not fair and proper was not challenged. The Revision Application filed by the employer was decided by order dated 15-1-2004. The Industrial Court confirmed the finding recorded by the Labour Court that the charges levelled against the employee have not been proved. The Industrial Court also confirmed the finding of the Labour Court that the employee is entitled to an order of reinstatement in the service. The Industrial Court, however, held that so far as the issue of backwages is concerned, the Labour Court was not justified in directing payment of full backwages to the employee. The Revisional Court found that the Labour Court has made an order for payment of full backwages without framing issue. The Revisional Court, therefore, remitted the enquiry back to the Labour Court only on the point of backwages. The Revisional Court by its order dated 15-1-2004 framed two issues in relation to backwages and remanded the matter back to the Labour Court.

5. In the petition filed by the employer, the employer has therefore challenged the order passed by the Labour Court as also the Industrial Court holding that the charges levelled against the employee are

not proved and that the employee is entitled to reinstatement in service. According to the employer, the employee is also not entitled to any backwages.

. The employee has filed the petition challenging the order of the Revisional Court setting aside the order of the Labour court directing payment of full backwages and remanding the matter back for enquire into the aspect of entitlement of the employee to backwages to the Labour court.

6. On behalf of the employer in his petition the order dated 21-2-1998 whereby the Labour Court had held that the departmental enquiry held against the employee is not fair and proper is also challenged. But in my opinion, the employer cannot be permitted to challenge the legality and validity of the order dated 21-2-1998 because while challenging the order of the Labour Court dated 31-12-2002 in the revision filed before the Industrial Court the order dated 21-2-1998 was not challenged.

7. The employer also challenges the finding recorded by the courts below in relation to the charges that were levelled against the employee. It is submitted

on behalf of the employer that there is evidence on record produced by the employer which shows that the charges that have been levelled in the departmental enquiry against the employee have been proved. I have also been taken through the deposition of the employee as also the deposition of the witness examined on behalf of the employer. However, in my opinion, it will not be permissible for this court to disturb the findings in relation to the charges that were levelled against the employee, because those are essentially finding of facts and which have been recorded concurrently by the two courts below. The finding on charges is based essentially on appreciation of the documents and oral evidence on record. Two courts below have appreciated that evidence and have recorded the findings. I do not find either that the findings are perverse or that there is no evidence on record to support those findings. To say the least, in my opinion, the findings are possible findings that can be recorded on the basis of material that is available on record. Once, it is found that the charges that were levelled against the employee have not been proved, in my opinion, there is no reason to deny reinstatement in service to the employee. She is a lady who was

working as a stenographer. Even the nature of the charges levelled against her cannot be termed as serious. There is no question of there being any loss of faith by the employer in the employee. Therefore, in my opinion, no exception can be taken to the order made by the courts below that the employee is entitled to reinstatement in service.

8. So far as the question of backwages is concerned, I find that the employee had made necessary averments in the complaint. Therefore, it was for the Labour Court to frame the issue on that aspect of the matter and it was for the employee to lead evidence initially on the aspect of gainful employment or absence of it after the order of dismissal. I find that the Revisional Court has rightly held that no issue has been framed in regard to that. Really speaking I do not find any evidence led by the employee on the aspect of gainful employment. The order on the issue of backwages is a remand order. Normally the writ court does not interfere with the remand order, because the order remanding the issue back does not terminate the litigation. The effect of the remand order is that both the parties are granted an opportunity of placing material before the

court on the issue which is to be enquired into after the remand.

9. Taking overall view of the matter, therefore, in my opinion, no exception can be taken to the order of the Industrial court remanding the matter back on the issue of backwages to the Labour Court.

10. In the result, therefore, both the petitions fail and are dismissed. Rule discharged with no order as to costs.

11. It is clarified that the employee has been held to be entitled to reinstatement in service, all the interim order that may have been passed by this Court stand vacated and now the employer will have to actually reinstate the employee in service and to pay to her wages from the date of the order of the Labour court granting reinstatement in service upto date. Wages will have to be calculated on the assumption as if she continued in service uninterrupted till the date of reinstatement.

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